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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-5664-6]

RIN 2060-AE04

National Emission Standards for Hazardous Air Pollutants From
Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; extension of compliance dates.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for secondary lead smelting by extending by six months the compliance date of the rule and the dates on which existing smelters must submit standard operating procedures (SOP) manuals. This action also sets the deadline for requests for extension of compliance at June 23, 1997. The current rule requires existing smelters to submit SOP manuals for baghouses and fugitive dust control by December 23, 1996, and to achieve compliance with the rule by June 23, 1997. The EPA is currently planning to revise portions of the final rule to address comments received in petitions for reconsideration. These revisions, which are scheduled to be published in February 1997, will materially effect the content of the SOP manuals and the air pollution controls needed to comply with the rule. Today's action is being taken to allow affected facilities adequate time to incorporate the revised requirements into their SOP manuals and to have

sufficient time to comply with the emission standards in the rule. This revised compliance date remains within the three year period for compliance allowed by section 112 (i)(3)(A) of the Clean Air Act.

DATE(S): Effective date: This final action will be effective on December 12, 1996 unless EPA receives adverse public comment on this document by January 13, 1997. In the event that EPA receives adverse public comment, the Agency will withdraw this rule and issue a proposal to extend the effective date to comply with the rule and to submit SOP manuals.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of a NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: Docket. Docket No. A-92-43, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC-6102), 401 M Street, SW, Washington, DC 20460; telephone (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-2364.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background

II. Need for this Action

III. Rationale for Direct Final Rule and Immediate Effective Date

IV. Administrative

- A. Executive Order 12866
- B. Unfunded Mandates Act
- C. Paperwork Reduction Act
- D. Regulatory Flexibility Act
- E. Submission to Congress and the General Accounting Office

I. Background

The NESHAP for secondary lead smelting (40 CFR part 63, subpart X) was proposed in the Federal Register on June 9, 1994 (59 FR 29750). The EPA received 31 letters commenting on the proposed rule and proposed area source listing. After considering fully the comments received, the EPA promulgated this NESHAP in the Federal Register on June 23, 1995 (60 FR 32587).

The final rule establishes emission limits for lead, as a surrogate for all metallic Hazardous Air Pollutants (HAP), from smelting furnaces, refining kettles, agglomerating furnaces, dryers, and fugitive dust sources at secondary lead smelters. The final rule also establishes emission limits for Total Hydrocarbons (THC), as a surrogate for HAP organics, from smelting furnaces. Work practice standards (ie. minimum hood face velocities, and building enclosures) are specified for the capture and control of process fugitive sources including furnace charging equipment and tapping locations, refining kettles, driers, and agglomerating furnace vents and taps. The final rule also requires smelters to develop site specific SOP manuals for fugitive dust control and baghouse operation and maintenance. Minimum SOP requirements are specified in the rule.

The final rule requires existing facilities to submit SOP manuals for baghouses and fugitive dust control within 18 months of publication (that is, by December 23, 1996), and to achieve compliance with the rule within 2 years of publication (namely, by June 23, 1997). The June, 1997 ultimate compliance date is one year earlier than the maximum amount of time--3 years--allowed for compliance with MACT standards. See CAA section 112(i)(3)(A).

The EPA received three petitions for reconsideration pursuant to section 307(d)(7)(B) of the Act from two secondary lead owners/operators, and the Association of Battery Recyclers. The petitioners objected to the introduction of bag leak detection (Sec. 63.548(e)) and the minimum baghouse SOP requirements (Sec. 63.548(c)) stating they were not logical extensions of the proposal. In addition, the petitioners requested that EPA reconsider requirements in the final

rule dealing with the THC limit for collocated blast and reverberatory furnaces (Sec. 64.543(c)).

The EPA has determined that several of the objections contained in the petitions are properly founded and is considering amending the rule accordingly, and is planning to publish amendments to the NESHAP in February 1997.

II. Need for This Action

As stated above, the current rule requires existing owners and operators of secondary lead smelters to submit the required SOP manuals for baghouses and fugitive dust control by December 23, 1996, and to achieve compliance with the rule no later than June 23, 1997. In addition, 40 CFR 63.6(i) sets the deadline for requests for extension of compliance to one year prior to the

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compliance date, in this case June 23, 1996.

Section 112(i)(3)(A) of the Act instructs the EPA to ``provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard." At the time of publication of the final rule, EPA believed that a 2 year period would allow facilities adequate time to achieve compliance with the rule, and that an 18 month period would be adequate to prepare and submit the requisite SOP manuals.

As stated, the EPA is currently planning to revise portions of the rule to address comments received in the petitions for reconsideration. These revisions, which are scheduled to be published in February 1997, will materially effect the content of the SOP manuals and the air pollution controls needed to obtain compliance.

Currently, owners and operators will not be able to prepare their SOPs on time, or will have to revise their SOPs once the amendments are published. They will also have less than 4 months to purchase and install control equipment necessary to comply with the final rule. Also, with out this extension, the owners and operators will not have an opportunity to prepare and submit a request for extension of compliance if needed after the amendments are published. The EPA does not believe that this situation is reasonable. Today's action extends

the compliance date to December 23, 1997--30 months after the original effective date and so within the time period for compliance allowed by section 112(i)(3)(A)--and extends the SOP submittal date to June 23, 1997, two years after the effective date and again within a permissible compliance period under the Act. This action also sets the submittal date for requests for extension of compliance at June 23, 1997 as provided for under 40 CFR 63.6(i)(3)(B). The EPA believes that these extended dates provide a reasonable amount of time to comply with the rule and that these extended dates will not compromise the rule's ultimate effectiveness, and indeed, will promote sound implementation of the rule by allowing sufficient time for compliance.

III. Rationale for Direct Final Rule and Immediate Effective Date

The EPA is promulgating this extension of the rule's compliance dates as a direct final rule (and therefore without prior notice and opportunity for public comment) because EPA views this as a noncontroversial action which appropriately corrects the rule's compliance dates after EPA received information which will require some changes to the rule and therefore will alter the provisions with which secondary lead smelters must comply. In fact, most of the secondary lead smelting industry has submitted comment to EPA on this issue through the petition for reconsideration process. However, should EPA receive any comment objecting to this notice, the Agency will withdraw this action and issue a proposal to extend the compliance dates (should EPA still consider that action to be appropriate). Objections may be addressed to Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

In addition, pursuant to section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), EPA is finding that this amendment relieves a regulatory restriction and therefore can be made effective less than 30 days from its publication date.

IV. Administrative

A. Executive Order 12866

The Agency must determine whether a regulatory action is ``significant" and therefore subject to OMB review and the requirements of the E.O. 12866, (58 FR 51735, October 4, 1993). The Executive Order defines ``significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this amendment to the final rule is not a ``significant regulatory action" under the terms of the Executive Order and is therefore not subject to OMB review.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (``Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure

by State, local, and tribal governments or the private sector of significantly less than \$100 million in any 1 year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This amendment to the rule will not impose any new information collection requirements.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Pub. L. 96-354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have a significant economic impact on a substantial number of small entities. This amendment will not result in increased economic impacts to small entities.

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E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. Since this rule decreases regulatory impact, it is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Compliance dates, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: December 9, 1996.
Carol M. Browner,
The Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63--[AMENDED]

The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 63.546 is amended by revising paragraph (a) to read as follows:

Sec. 63.546 Compliance dates.

(a) Each owner or operator of an existing secondary lead smelter shall achieve compliance with the requirements of this subpart no later than December 23, 1997. Existing sources wishing to apply for an extension of compliance pursuant to Sec. 63.6(i) of this part must do so no later than June 23, 1997.

* * * *

Section 63.549 is amended by revising paragraph (b) to read as follows:

Sec. 63.549 Notification requirements.

* * * *

(b) The owner or operator of a secondary lead smelter shall submit the fugitive dust control standard operating procedures manual required under Sec. 63.545(a) and the standard operating procedures manual for baghouses required under Sec. 63.548(a) to the Administrator or delegated authority along with a notification that the smelter is seeking review and approval of these plans and procedures. Owners or operators of existing secondary lead smelters shall submit this notification no later than June 23, 1997. The owner or operator of a secondary lead smelter that commences construction or reconstruction after June 9, 1994, shall submit this notification no later than 180 days before startup of the constructed or reconstructed secondary lead smelter, but no sooner than June 23, 1995.

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